

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

BARRY E. SHELLEY,	:
	:
Plaintiff,	:
	:
v.	: Case No. 3:04-cv-01-JFC-KAP
TIMOTHY MAPES, WARDEN,	:
SOMERSET COUNTY JAIL,	:
	:
Defendant	:

MEMORANDUM ORDER

This matter was referred by the Honorable Maurice B. Cohill to Magistrate Judge Keith A. Pesto for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636, and Local Civil Rule 72 for Magistrate Judges. Subsequently the matter was transferred to the Honorable Gary L. Lancaster, who administratively closed this matter after notice of a settlement but before settlement documents had been drafted. After Chief Judge Lancaster's death the matter was reassigned to the undersigned judge.

The magistrate judge filed a Report and Recommendation on September 16, 2013, (ECF No. 79), recommending that the defendant's Motion to Enforce Settlement Agreement, (ECF No. 76), be granted, and the settlement proceeds be deposited with the Clerk of Court.

The parties were notified that pursuant to 28 U.S.C. § 636(b)(1), they had fourteen days to file written objections to the Report and Recommendation. Plaintiff, proceeding *pro se* after the grant of the motion to withdraw filed by appointed counsel, filed timely objections at ECF No. 80, asserting that because there is no signed, sealed, and notarized agreement, and because he told his counsel after the settlement conference that there was no agreement as to payment of part of the settlement funds (\$3420.42 to the Somerset County Office of Costs and Fines) there was no settlement. That is not correct. An agreement to settle a lawsuit can be made orally, and the magistrate judge found that when plaintiff was present at the settlement conference (and represented by counsel) on April 19, 2011, the parties reached an agreement to settle the plaintiff's claims on the terms set out in the Report and Recommendation.

After de novo review of the record of this matter, the Report and Recommendation, and the objections thereto, the following order is entered:

AND NOW, this 21st day of January, 2014, it is

ORDERED for the reasons set forth in the Report and Recommendation defendant Timothy Mapes' Motion to Enforce Settlement Agreement (ECF No. 76) is GRANTED.

IT IS FURTHER ORDERED that the Report and Recommendation (ECF No. 79) is ADOPTED as the Opinion of this Court.

IT IS FURTHER ORDERED that pursuant to Rule 67 of the Federal Rules of Civil Procedure and Local Civil Rule 67.2 of this Court, defendant is permitted and hereby ordered to deposit money into the Registry of the Court in the amount of \$8,420.42; as soon as the business of the office allows, the Clerk will deposit the money into an interest bearing account, the Court Registry Investment System ("CRIS"), administered by the Administrative Office of the United States Courts under 28 U.S.C. 2045. This shall be the only investment mechanism authorized. The custodian, CRIS, is authorized and directed by this Order to deduct the investment services fee for the management of investments and the registry fee, set by the Judicial Conference, for maintaining accounts deposited with the Court.

Upon execution of a full and final release by the plaintiff and the filing of that release with the Clerk, the Clerk shall pay \$3,420.42 to the Somerset County Office of Costs and Fines, and the balance after deduction of the investment services fee to the plaintiff in compliance with Local Civil Rule 67.3. The Complaint is dismissed with prejudice.

BY THE COURT:

/s/ Joy Flowers Conti
JOY FLOWERS CONTI
CHIEF UNITED STATES DISTRICT JUDGE

Notice to counsel of record by ECF and by U.S. Mail to:

Barry Shelley
364 Covered Bridge Road
Rockwood, PA 15557